

# SENATE EDUCATION COMMITTEE

75th Legislature

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Opinion Committee August 19, 1997

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AUG 21 1997

The Honorable Dan Morales  
Attorney General  
209 West 14th and Colorado  
Austin, TX 78711-2548

FILE # ML-39739-97

I.D. # 39739

GOVERNMENTAL INQUIRY  
UNIT

Dear General Morales:

RQ-978

In 1987, the legislature adopted Section 51.306, Education Code. This law required that students at Texas' public universities be tested for certain skills during their first year of enrollment. Students performing below minimum standards in any skill area were required to take remediation courses. Students unable to pass the test were not allowed to enroll in upper-division courses and, hence, were unable to receive a college degree.

Since the initial legislation, the legislature has continually expanded the categories of students exempted from passing the test. For example, deaf or elderly students were exempted in 1995. Similarly, students proving math-related disabilities or receiving a grade of "B" in a freshman-level course in the area of deficiency were exempted in 1997. See generally Sections 51.306(m) - (u), Education Code. Finally, the legislature has never extended the test to students at private schools or universities, despite the attention that it has paid to the scope of students covered by the legislation.

The Higher Education Coordinating Board now proposes to extend this test to students receiving degrees from proprietary schools. See Attachment 1. There is no question that the Board is given authority to approve degrees offered by these schools. Section 132.063, Education Code. Similarly, the Board is granted other powers under Chapter 61, Education Code, and by the testing statute itself. See Section 51.306(b). Please also note that a substantial revision of the law was adopted during the 1997 Regular Session. In this revision, Section 51.306(b) relating to the students required to take the test was amended, but no mention was



made of students in proprietary schools. To the contrary, as noted above, the legislature continued to narrow the applicability of the test.

In light of the above, I respectfully request your opinion on the following issue:

Has the Texas Higher Education Coordinating Board been granted the power to extend the scope of Section 51.306, Education Code, or any part thereof, to students seeking degrees at proprietary schools?

Thank you in advance for your attention concerning this question.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Teel Bivins', written over the printed name.

Teel Bivins



# TEXAS HIGHER EDUCATION COORDINATING BOARD

P.O. Box 12788 Austin, Texas 78711

July 25, 1997

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512/483-6101  
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Senator Teel Bivins  
Chair, Senate Education Committee  
P.O. Box 12068  
Austin, TX 78711

Dear Teel:

I am writing in response to your letter of July 11, 1997 regarding a decision our Board made one year ago to require that proprietary schools which we authorize to offer degrees adequately prepare their students to pass the Texas Academic Skills Program Test. We had made that requirement effective January of 1997, but at our January meeting we agreed to defer its implementation until September 1, in order to allow time for the proprietary schools to argue their opposition to this requirement with the Legislature.

We all agree with your view that the TASP statute (Texas Education Code Section 51.306) does not apply to students at proprietary schools. We have never argued that this section of the law was our authority for applying TASP to the proprietary schools. However, it is our Board's view that, as the "highest authority in the state in matters of public higher education" (§ 61.051), we do have authority to apply reasonable requirements and prerequisites to our approval of a degree program at a proprietary school. We base this belief on Section 132.063 of the Education Code, which states: "A proprietary school may offer a degree approved by the Texas Higher Education Coordinating Board."

We have interpreted this provision as requiring us to establish the standards that a proprietary school must meet to offer degrees to the citizens of Texas. From the time this authority was given to the Coordinating Board in 1989, we have followed the philosophy that for purposes of consumer protection, a proposed degree program at a proprietary school must meet essentially the same standards as a degree program at a public community or technical college in order to be approved.

As we reviewed our requirements in 1996, after recognizing that over the preceding four years the number of proprietary schools offering degrees had grown from 12 to 35, and the number of degree programs they offered had grown from 22 to 78, we realized that an important quality control requirement applied to public institutions and their degree programs had not been applied to proprietary schools or those degrees offered at proprietary institutions. We reasoned that since students at public institutions were required to demonstrate that they could read, write and calculate at beginning college level before they could receive a degree, the same standard should apply at degree-granting proprietary schools. We believe that such a requirement and expectation of

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The Honorable Teel Bivins  
July 25, 1997  
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degree-seeking students would ensure that a proprietary school would provide its degree recipients with communication and mathematics skills at least at this minimal level, and that this would provide an important quality assurance both to students and to employers.

Our Board has no desire to expand its jurisdiction beyond the authority granted by any statute. In considering the requirement that degree-seeking proprietary school students pass the TASP, it has been our belief that such a requirement was within our authority to assess the quality of degrees offered by a particular proprietary school, and that such a requirement is a reasonable one in order to ensure that graduates of proprietary schools meet the same basic standards as graduates of public institutions offering similar degrees. We have not applied the requirement to certificate programs offered by the proprietary schools, which means that students at only 35 of 318 licensed proprietary schools are affected by the requirement.

We acknowledge that some proprietary schools disagree with our Board on this matter. We will continue to work with these schools, although we understand that some may wish to challenge the rule in court in an effort to resolve the disagreement. I hope we can avoid that, but this may prove to be a necessary process to resolve our differences with them over this issue.

I have asked Ken Ashworth to contact you about this issue, and I assure you that I will be glad to discuss it with you.

Sincerely,



Leonard Rauch

c: Kenneth H. Ashworth

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SENATOR BIVINS  
CAPITOL OFFICE